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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,081	10/14/2003	Martin R. Hodge	004974.01148	5030

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EXAMINER	
HUTSON, RICHARD G	

ART UNIT	PAPER NUMBER
1652	

MAIL DATE	DELIVERY MODE
12/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/685,081	HODGE, MARTIN R.	
	Examiner	Art Unit	
	Richard G. Hutson	1652	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *5 and 10*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,4,6,9,11-19 and 29-35*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Richard G Hutson/
Primary Examiner, Art Unit 1652

Continuation of 11. does NOT place the application in condition for allowance because:
Claims 1, 4, 6, 9, 11-19, 29-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
Claims 1, 4, 6, 9, 11-19, 29-35 are rejected under this statue because the newly added amendment of these claims that requires that the claimed method requires that binding between the test compound and the purified 14189 polypeptide is determined using an antibody which selectively binds to the polypeptide, Is not supported by applicants specification at the time of filing and is thus considered new matter.

Applicants submit that the written description requirement of 35 U.S.C. § 112 does not require that the subject matter be described literally or in haec verba. Applicants further submit that paragraph [0015] teaches that antibodies that selectively bind to the disclosed kinase polypeptides "are useful in detecting the kinase polypeptides. Applicants submit that paragraphs [00129] through [00141] describe various embodiments of screening assays, and paragraph [00139] teaches methods for detecting complexes of the disclosed kinase protein and a target molecule. The methods include "immunodetection of complexes using antibodies reactive with the kinase protein or target molecule ...."

An applicant complete argument is acknowledged, however, is found nonpersuasive for the reasons previously stated and repeated herein. Specifically, support for the specifically claimed methods is not found in applicants specification as originally filed. Applicant's submission that applicant's specification teaches various methods by which antibodies can be used is not persuasive in supporting that applicants were in possession of the specifically claimed methods. Applicant's submission that applicant's specification teaches methods including immunodetection of complexes using antibodies reactive with the kinase protein or target molecule is not persuasive for supporting that applicant's specification teaches the claimed methods including immunodetection of complexes using antibodies reactive with the kinase protein and a compound which binds to the kinase polypeptide. Applicant's specification appears to distinguish between a kinase target and a compound which binds to the kinase polypeptide, possibly interfering with the kinase and its target. Thus the rejection based upon new matter is maintained..